

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte VINCENT M. S. HUANG

Appeal No. 2000-1337
Application 08/955,002

ON BRIEF

Before McCANDLISH, Senior Administrative Patent Judge, and
McQUADE and GONZALES, Administrative Patent Judges.

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Vincent M. S. Huang appeals from the final rejection of
claims 1 through 13, all of the claims pending in the
application. We reverse.

The invention relates to a sealed cooktop burner. Claim
1 is illustrative and reads as follows:

1. A burner for a sealed cooktop comprising:

a burner head including a chamber enclosed by a
peripheral wall, the peripheral wall including a
plurality of burner ports communicating between said

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chamber and the exterior of the head;

a burner cap over said burner head enclosing said chamber and covering said ports;

a burner base for supporting the burner in a cooktop opening;

a primary air flow passage in communication with said chamber;

a plurality of bypass ports between said burner head and at least one of said burner cap and said burner base, adjacent to said burner ports and covered by said cap, and

a secondary air flow passage independent of said primary air flow passage in communication with said plurality of bypass ports.

Claims 1 through 13 stand rejected under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the subject matter the appellant regards as the invention. According to the examiner, these claims are indefinite because:

[t]he term "ports" as used for example in line 3 of claim 1 and in the specification is misdescriptive. The portions 32 and 38 of the burner are considered either recesses, grooves or passageways. In order to form "ports", other mating parts such as cap 40 must mate with recesses 32. A port is considered to be a hole as set forth in Webster's Third New International Dictionary.

The term "chamber" as used for example in line 2 of claim 1 in applicant's specification appears misdescriptive. To form a chamber, the cap 40 and/or base 50 must be mated with the burner head 20. A chamber is generally defined as an enclosed space or cavity.

The "primary air flow passage" recited in line 8 of claim 1 for example which includes the venturi passage 74 and chamber in the burner head leading to discharge passages 32 is intangible and should be defined by either the structure forming such or in terms of means forming such.

The "secondary air flow passage", at 118 and leading to outlets at 112, is intangible and should be defined by either the structure forming such or defined in terms of means forming such. Note in fig. 4, for example, that structure forming the primary air flow passage is common to structure forming the secondary air flow passage and the structure connecting the secondary air flow passage to the plurality of bypass ports 120 is common to the structure forming the recited "burner ports". Note in support of such that claim 4 recites that "a venturi support wall" separates the primary flow passage from the secondary flow passage.

Claim 2 is further misdescriptive in that the fingers of the bu[r]ner head are not considered "apertured" as recited. The portions 32 and 34 of the burner head are considered recesses, grooves or passageways. This appears to be consistent with the dictionary definition presented by the applicant in the amendment filed October 13, 1998 where in [sic: wherein] an aperture is define as "A hole, gap, slit, or other opening; an orifice."

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It is to be noted that applicant appears to be using some of the structure from the embodiment of Figs. 1-3 in the embodiment of Fig. 4 and it is not clear from the description and drawings how the burner head 20 of Figs. 1-3 with "ports" 32 and 38 mate[s] with the surrounding structure to provide "bypass ports

120" and bypass passages 112 between the body 20 and base 50 as set forth on page 10 of the specification. The bypass passage 112 in Fig. 4 as illustrated also appears to be open laterally to the atmosphere [examiner's answer, Paper No. 15, pages 3 through 5].

The appellant counters that one of ordinary skill in the art would readily understand the claim limitations at issue when read in light of their ordinary and accustomed meanings and the underlying specification (see the main and reply briefs, Paper Nos. 14 and 16).

The second paragraph of 35 U.S.C. § 112 requires claims to set out and circumscribe a particular area with a reasonable degree of precision and particularity. In re Johnson, 558 F.2d 1008, 1015, 194 USPQ 187, 193 (CCPA 1977). In determining whether this standard is met, the definiteness of the language employed in the claims must be analyzed, not in a vacuum, but always in light of the teachings of the prior

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art and of the particular application disclosure as it would be interpreted by one possessing the ordinary level of skill in the pertinent art. Id. Unless the disclosure makes clear that a special meaning was intended, words in a claim are given their ordinary meaning in the usage of the field of the invention; however, words of ordinary usage must nonetheless be construed in the context of the disclosure. See Toro Co. v. White Consolidated Industries Inc., 199 F.3d 1295, 1299, 53 USPQ2d 1065, 1067 (Fed. Cir. 1999).

The examiner's concern with the recitations of the "ports" (claims 1, 6 and 9), the "chamber" (claims 1, 6 and 9) and the "apertured" fingers (claim 2) appears to be that while these terms are consistent with the undisputedly clear descriptions thereof in the underlying specification, both the claims and the specification are misdescriptive because they are inconsonant with the ordinary and accustomed meaning of the terms. The examiner apparently views these ordinary and accustomed meanings as requiring ports, apertures and chambers to be bounded or enclosed about their entire effective

peripheries, whereas the ports, apertures and chambers disclosed and claimed by the appellant are recesses, spaces or cavities which are not bounded or enclosed about their entire effective peripheries.

Webster's New Collegiate Dictionary (G. & C. Merriam Co. 1977) defines the term "port" as meaning "an opening for intake or exhaust of a fluid esp. in a valve seat or valve face," the term "chamber" as meaning "a natural or artificial enclosed space or cavity," and the term "aperture" as meaning "an opening or open space : HOLE."¹ These definitions are broad enough to cover the "ports," "chamber" and "apertured" fingers disclosed and claimed by the appellant. Thus, the appellant's specification and claims are not misdescriptive in the sense urged by the examiner. Moreover, even if there was some inconsistency here, the claims would nonetheless point out and circumscribe the appellant's invention with a reasonable degree of precision and particularity since there is no real question as to what the terms at issue mean when read in light

¹ These definitions are in accord with those advanced by the appellant and the examiner.

of the underlying disclosure.

The examiner's criticism of the recitations of the "primary air flow passage" (claims 1, 6 and 9) and the "secondary air flow passage" (claims 1, 6 and 9) as being "intangibles" is also unfounded. In the context of the claimed cooktop burner, these air flow passages are simple, straightforward and readily understood structural features. Moreover, that these passageways might share their delimiting structure with one another and/or other elements of the burner does not pose any indefiniteness problem.

Finally, the observations in the last paragraph of the examiner's explanation pertain to the adequacy of the disclosure rather than the definiteness of the claimed subject matter, and thus have no particular relevance to the rejection at hand. To the extent that there is a problem with the disclosure, the examiner is free to deal with it via an appropriate objection and/or rejection under 35 U.S.C. § 112, first paragraph.

In light of the foregoing, we shall not sustain the

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standing 35 U.S.C. § 112, second paragraph, rejection of
claims 1 through 13.

The decision of the examiner to reject claims 1 through
13 is reversed.

REVERSED

HARRISON E. McCANDLISH)	
Senior Administrative Patent Judge)	
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)	
)	BOARD OF PATENT
JOHN P. McQUADE)	APPEALS AND
Administrative Patent Judge)	
INTERFERENCES)	
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)	
JOHN F. GONZALES)	
Administrative Patent Judge)	

jpm/vsh

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RONALD M. NABOZNY
BROOKS & KUSHMAN
1000 TOWN CENTER
TWENTY-SECOND FLOOR
SOUTHFIELD, MI 48075